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Review of Malpractice Suit .
Bowley vs. Sanger. 1878

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REVIEW
OF
MALPRACTICE SUIT,

Bowley vs. Sanger.

Bowley
JANUARY TERM,

1878.

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March 10, 1938

MALPRACTICE SUIT,

JANUARY TERM, 1878.

I have just been through a tedious trial of eight days for malpractice, in the case of Bowley vs. Sanger, which has hardly received a passing notice from the daily papers of this city. The interest manifested by the citizens of Bangor to learn more of the details of this suit, induces me to publish a review of it, which will post the people of Penobscot County in the risk and cost to the county and surgeon of opening an abscess.

The science and art of surgery is the subject involved; whether it can be practiced safely, or like all unprofitable industries, abandoned, from want of encouragement and profit. Suits brought against surgeons affect all classes, the rich as well as the poor, the intelligent as well as the ignorant. None are exempt from sudden accidents, injuries, and bodily afflictions, which call for immediate and skillful attention. With the risk comes up the price, and decreases the chances of the poor receiving any attention whatever.

Follow up such suits, and it only becomes a question of time whether the surgeon can afford to prepare himself to meet the requirements of a city like Bangor, or whether the risks are not so great in comparison to the emoluments, as to drive all responsible surgeons out of the practice of the art of surgery, leaving it as among nomadic tribes to enchanterers and the "*vis medecatrix naturæ*."

It takes years of study and experience to make a good and efficient surgeon, and the surgeon can't afford to be hampered with a trial before a non-professional jury, every time he undertakes a doubtful operation. He can't afford to be pounced upon and despoiled of his hard-earned reputation and competence, by a class of pettifoggers, who can use their court privileges to extort money from the surgeon, by joining in conspiracy with the afflicted poor, who are tempted to peddle their ills and injuries for money. The medical profession can't afford to become the victims of legal sharks at unequal and ruinous odds. They must gracefully retire from such a thankless and unprofitable employment,

and leave the people to solve the problem to their heart's content. Four malpractice suits have been tried in this county within a year, without a verdict for the plaintiff in a single case. I have been twice afflicted in this way; first in the clubfoot case, where the father was induced to mortgage his horse and carriage, for one shake of the dice against my estate, but would not pay out one cent for shoes to restore his child's feet; second, the Bowley suit, full of anxiety and expense to plaintiff, defendant, and the county.

I received for my professional services in these two cases, ninety cents net and two law suits thrown in. I have paid out more in my defense than I have received for operative surgery since the close of the war, and I think I have had my full share of practice. This may seem an exaggeration, but more than half of our surgery is among the poor. These suits have buried the plaintiffs in hopeless debt, and cost the County of Penobscot more than \$2,000, which is a dead loss, without benefit to a single soul.

The damage of this class of suits can't be estimated in dollars and cents. Surgeons have become demoralized, and the poor are suffering for the services of experienced surgeons who heretofore have rendered their services cheerfully. A large number of surgeons refuse to practice surgery, except among reliable and responsible families, whose reputation and character are guarantees against threats and prosecutions. I have turned off more than twenty cases since these suits were commenced—one went to the almshouse. Some surgeons pay smart money rather than suffer the vexation of malpractice suits, encouraged by unprincipled lawyers who know how to cover their tracks.

I see the Legislature proposes to make speculative practice felony. I hope it will bring to justice a class of lawyers, who inflict suffering upon the people, and are really worse than bank-breakers or highway-robbers, as they know how to cover their rascalities. Not one malpractice suit in five hundred is well grounded, and there is not a responsible surgeon in Maine who has not been threatened, prosecuted, or made to pay smart money.

The Bowley vs. Sanger suit grew out of a diseased knee-joint. Bowley, of Alton, had manifested latent symptoms of chronic disease of the bones and articular structures of the right knee-joint, for twelve years, when, in April, '76, he received a blow on the internal surface of the leg just below the knee-joint, causing an abscess in the fleshy tissues underneath the seat of the blow, and rekindled the joint disease, commonly called white swelling. He had been treated by Drs. Folsom and Perley, of Oldtown, and Dr. Seavey, of Bangor. Dr. Seavey had twice aspirated the abscess, and finally lanced it August 1, '76, over the knee-joint as he testified in court. Bowley had used a crutch since the injury in April, and was lame.

The abscess gradually extended and grew worse after the lancing. The night of the 10th of August he sent for me twice; visited him the

morning of the 11th and found him suffering from the abscess, lanced by Dr. Seavey. The swelling had rapidly increased down the leg, the skin was red, infiltrated, boggy, and threatened mortification, from the burrowing and acrid matter, decomposed by exposure to the air through the opening.

I called to my assistance the late Dr. Weston, a physician esteemed by every citizen of Bangor; well known for his intelligence, prudence, and honesty; a person of fine education, fine mind, and rare judgment, whose qualifications not a physician doubted at that time, and none now if we except Dr. Seavey.

We found the knee-joint stiff. Bowley said Dr. Seavey had lanced the joint, let out the joint water, and spoilt the joint. We passed a grooved director into the abscess, downward in various directions, and concluded to enlarge the opening, in order to give freer vent to the matter, which was burrowing among, and destroying the sub-adjacent tissues.

Dr. Weston administered the ether. The director was introduced with the groove looking towards the skin, and a knife run along the groove, so as to cut outward, through the skin, and not touch or injure any of the underlying tissues. The cut was forked at the bottom, and about three inches long. A tent to absorb the acrid matter, made of cotton, was inserted into a hole, about the size of my little finger, running backwards from the bottom of the abscess, towards the calf.

Dr. Weston's deposition taken before his death substantiates the above. He says that he found the knee stiff, and this is confirmed by Dr. Briggs' deposition, who examined Bowley's knee with Dr. Seavey at Dr. Seavey's office, when he applied for treatment in June or July, '76. He came to the office with a crutch and cane. Dr. Folsom testified that he treated Bowley's lame knee for several seasons before April, '76.

I especially notified Bowley on the morning of the 12th of August; that I was not and should not be responsible for the stiffness of the joint and the then existing disease of the joint. Bowley remained under my care from the 11th to the 23d of August, '76. He improved rapidly and the discharge grew less.

He was out of bed every day after the first. I think; down stairs and out doors the first week. When he left me he was to return, as his postal of August 24th from Orono shows, for a more thorough examination of the diseased joint, making it a crucial test, that if the abscess did not fill in and heal rapidly, it would confirm my suspicion of established bone disease, which would require active treatment and surgical interference to save the motion of the knee-joint, and the leg from amputation.

Bowley left August 23d, and wrote to me from Orono, August 24th, as follows: "Need not look for me. Two or three doctors say you have injured me. I have two good doctors for my evidence. You must settle all damage." He went to board, in Orono, at Mrs. Deane's, and as she testified, put himself under the joint treatment of Drs. Fisher and

Seavey. Drs. Fisher and Seavey are evidently the doctors referred to by Bowley, as Mrs. Bowley in her deposition states that he went to Bangor to see Dr. Seavey before coming to Orono on the 24th.

The suit which locked up the little property which I possessed, and compelled me to give bonds for \$12,000, was not brought for doing *badly* what I did do, but charging me with doing what no sane surgeon *could* do, viz:

Carelessly cutting out a sound piece, or a large piece of flesh, described as 2x3 inches. Cutting through the capsular ligament, letting out the joint-water, exposing the heads of the bones to the air, injuring the delicate structures of the knee-joint, etc., all of which I pronounce absolutely false, and fabrications which cannot be sustained without perjury.

Both Dr. Weston and myself emphatically denied these charges under oath. Dr. Weston deposed: "The skin and superficial fascia were divided over a grooved director, and nothing else whatever." I believed it was the most effectual treatment, and therefore advised it." "There wasn't a drop of joint-water let out." "There was not the least exposure of the knee-joint to the air." "Could not expose the heads of the bones." Dr. Fisher, also, who treated Bowley next after me, swore that "there was not any evidence of the loss of flesh."

Chief Justice Appleton, in his charge to the jury, in substance, said, that the suit rested entirely on the first count, viz: Cutting into said knee and cutting out a piece of sound flesh.

The only direct testimony for the plaintiff was from an Irishman by the name of Michael Finnegan, hack-driver and boarding-house keeper. Bowley boarded with Finnegan, who claims to have been in the room with the two surgeons, and held Bowley while under ether. He swore that Dr. Weston did not examine the knee, but took a position in the north-west corner of the room, where he sat like a *mute* and spoke not a word.

Finnegan further swore that I proceeded at once to administer ether, explored the opening with a round probe, and pulled it out, took a sharp pointed, curved and narrow-bladed knife, and with one rapid sweep round the skin, cut out an oval piece of flesh 2x3 inches, the size of a hen's egg, without the least dissection; including in the centre of the piece of flesh the original opening made into the abscess by Dr. Seavey, and flipped it into a wash-bowl. Finnegan claimed that he held the left arm and leg, where he could see every thing, while Dr. Weston sat back to me, could not and did not see any part of the operation.

This bold, false, and glaringly impossible statement of Finnegan's is in complete conflict with the traditions and practice of surgeons. Without bolstering, it would tumble to pieces of its own weight; so Bowley, the plaintiff, his brother, his wife, and Mrs. Deane, who boarded Bowley at Orono, were brought on to the stand to corroborate Finnegan.

They swore with marked accuracy and unanimity about noticing the

loss of a piece of flesh the size of a hen's egg. Mr. Bowley observed it the 12th, Mrs. Bowley the 13th, and Mrs. Deane the 24th of August. Bowley and brother also testified that Dr. Fisher noticed it, *before* they gave the doctor the history of the case.

We will apply the scalpel seriatim. Bowley never spoke to me about the loss of any flesh, and never expressed any dissatisfaction, or he would not have agreed to return. Mrs. Bowley in her deposition, taken April, '77, swore that I spoke to her about danger of diseased bone, and she never talked with me about anything else whatever. She swore that Bowley saw Seavey on the 24th, before he put himself under Fisher's care; that there were straps over the cut; that Bowley's knee was not stiff before I cut out the flesh; he never complained of his knee, was never treated, never lame, and never had any trouble with his knee before the accident of April, '76.

We produced testimony to falsify her statements about the knee-joint. Dr. Fisher deposed, that there were ²⁴straps over the cut; that there was not any evidence of loss of flesh, and the cut was a "simple incised and gaping wound three and one-half inches long through skin and fascia." Dr. Briggs deposed, that the knee was stiff when Bowley first applied to Dr. Seavey for treatment, and Dr. Folsom also said that the knee was lame and stiff, and he had treated the knee every season before April, '76. Others testified to his lameness. One party wrote me I could have a hundred witnesses to prove the same point.

As to Dr. Fisher he states in his letter to me, dated June, '77, "he used some very strong language against me *after* hearing Bowley's report, the first time he dressed the leg." Before Dr. Fisher would assume any responsibility he procured a certified statement from Bowley, as follows: "Dr. Sanger returned with another physician and put me under ether, and kept me under it an hour, and during that time opened my knee and took therefrom a large piece of flesh, and then dressed it with a tent," etc., etc. I produced this statement in court as conclusive refutation of Bowley and brother's testimony. Finnegan even acknowledged that he did not speak to Bowley about cutting out the flesh while Bowley was under my care.

Drs. Briggs and Shepard testified, that Briggs asked Mrs. Finnegan before Bowley, whether she saw a piece of flesh in the wash-bowl, or emptied it out, and she replied that *she did not*. The above, in connection with Mrs. Bowley's deposition, that her husband visited Dr. Seavey, Aug. 24, before putting himself under Dr. Fisher's care, conclusively proves where the flesh story was concocted, and that it was an after-thought of Bowley & Finnegan's to assist in securing the services of Dr. Fisher.

Thus the corroborative testimony of Bowley, wife, and brother, wastes like a rope of sand, leaving Finnegan a foundered ship on a tempestuous ocean, and Mrs. Deane a spared monument of our clemency.

We have besides, the deposition of Dr. Weston, which is a flat denial

of Finnegan's charges. He testified as follows: "I stood where I could see the whole operation in all its steps, noticed and advised everything that was done, and saw no piece of flesh or any flesh whatever removed. There was none removed, not a particle. I noticed the director was the common blunt-pointed director. The exuding matter was so acrid that it stained the grooved director at once. The skin and superficial fascia were divided over a grooved director, and nothing else whatever."

Further, Mrs. Bowley testified, while she was with her husband, she never got up with him but once at night, never did anything for the cut daytimes, never complained to the doctor, and never sent for him to relieve suffering or pain. I always found it doing well and never suspected any disaffection.

I produced the testimony of five doctors to invalidate the testimony of one Irishman, without success with six of the jurymen. How many would it require to make the opening of an abscess safe.

To further discredit Finnegan and Bowley's testimony, we have Bowley's letter that he was under ether one hour, and Finnegan's sworn statement, that I was in the room just 65 minutes. When brought to the test he could account for only 26 minutes, viz: 7 in reviling Seavey, which is false, 7 in giving ether, 7 in operating, and 5 in bandaging and leaving. What became of the other 34 to 35 minutes? It was not idly spent, as shown by Finnegan's testimony, that I proceeded to etherize immediately, without preliminary preparation of sponge, dressing, and instruments, and without any talk or consultation with Dr. Weston.

Dr. Weston, on the contrary, is explicit. He deposed "there was no one present critically, and narrowly watching the operation in all its stages, but Mr. Finnegan was out and in. He saw the limb after the operation, and he saw it after it was commenced, and he might have seen a few intervening steps."

Finnegan swore I used a sharp pointed, narrow, and curved bistuary, sickle-shaped, and never used a grooved director to cut on. Such blades are never used to cut out or dissect flesh. The scalpel is the only knife used. The removal of flesh would require the assistance of Dr. Weston to sponge away blood, and hold open the edges of the cut. The knife described *might* be used over a grooved director and *not otherwise*. Dr. Weston says, "I noticed the director, it was inserted carefully, slowly and tentatively." It could not be used in the way described, without mutilation, which would have consigned the patient to an early grave, or immediate amputation. No sensible man can allow Finnegan's statements to outweigh the life-time experience and practice of any respectable surgeon.

Was there any object or motive in such mutilation. Free incision of the abscess, would relieve the choked up capillaries and blood vessels, and save congested and infiltrated skin. The cutting out of flesh would anticipate overburdened nature in destroying the very skin which we wanted to save. Age is presumed to bring experience, and experience

caution, and it is a natural presumption that Dr. Weston and self had acquired a little of both.

Dr. Weston has been in the practice of medicine more than thirty years, was above want or improper influences. He served eight years as city physician of Portland and surgeon in charge of the Marine Hospital. He was peculiarly cautious, careful, and observing:

The 9th of March I shall have been twenty-five years in the active and general practice of my profession. Served more than two years as Assistant Surgeon of U. S. Marine Hospital, Chelsea, and Charity Hospital, New York, and in visiting the hospitals of Edinburg; London and Paris. Served over four years in the army, from Regimental Surgeon to Medical Director of an Army Corps of over 40,000 soldiers, frequently in charge of field and general hospitals of more than one thousand sick or wounded. Have amputated as many arms and legs as any surgeon in the country, and made more excisions or operations on the joints than all the surgeons in Penobscot County.

Thus far Dr. Weston's testimony remains unimpeached. It became necessary to move heaven and earth to break it down. To his eternal shame, Dr. Seavey entered the arena, and repeated an interview which he had with Dr. Weston in 1876, charging Dr. Weston with saying, "*He did not see the operation; he was giving ether.*" Dr. Seavey knows better. Dr. Weston positively asserted that, "he was called in consultation and asked a consulting fee. *He saw every step of it.*" The surgeon never lived who would meet in consultation and sanction a surgical operation without examination, without speaking and without assuming a part of the responsibility, and assisting in the operation. There is not a respectable surgeon in the State of Maine, acquainted with Dr. Weston's character, who would take any stock in such arrant nonsense.

It so happens Dr. Weston related this interview, and the only one alluded to with Dr. Seavey to me. I jotted it down at the time. I will quote one paragraph only, viz: "Dr. Seavey denied making an opening or lancing over the knee-joint." I will verify this statement by a coincidence, and if we can prove that Dr. Seavey contradicted himself in only one of the points mentioned in this interview, it will go far to sustain Dr. Weston's clear, uniform and positive testimony.

Within two or three days of this interview, Bowley writes to Dr. Fisher as follows: "Sanger says he found a hole cut by Dr. Seavey over the knee-joint. Don't Seavey know better than that? When Seavey tells his story it will appear different." Now Dr. Briggs' testimony and Bowley's recollections are that Dr. Seavey called the disease synovitis of the knee-joint, and according to Bowley's letter and Weston's interview, *he did not lance it*. Dr. Seavey testified that it was an abscess and not synovitis, and *he did cut the hole* which Sanger found. Here is a square contradiction.

Again Bowley writes to Dr. Fisher: "Dr. Weston went to Seavey and told him I said to Sanger that I was to sue Seavey for \$3,000. This

was done to turn Seavey against me, but I don't think they will make that work. "The above proves Dr. Seavey was in constant communication and collusion with Bowley, to sustain his case, to hold Fisher up to the rack, and break down my defense. It is not at all probable that Seavey would have omitted such invaluable testimony as "Weston did not see the operation; he was giving ether." Dr. Seavey as he testified tried to verify this interview by the by-standers, but none remembered any such language. It was evidently an after-thought.

August 30th a new epoch dawns. Bowley reappears at Finnegan's, and Seavey becomes very active. Bowley writes to Fisher August 30th: "Dr. Seavey and four other doctors held a consultation. Dr. Seavey told me to write you and for you to come down. He wants you to tend me. He feels dreadfully mad all over with Dr. Sanger. Says it is an outrageous piece of business." Dr. Seavey showed the doctors the gaping cut; said Sanger cut out a piece of flesh; Finnegan told him so. Seavey testified that Finnegan furnished all the positive information, and he took it for granted that flesh was cut out, because Finnegan said so. Said none of the physicians made any examination, except to look at it. Dr. Brown said he went with Dr. Seavey, from mere curiosity; was not on speaking terms with Dr. Sanger and believed the statement because Seavey said Finnegan told him so. The oracular Finnegan was quoted as Seavey's scientific authority. Dr. Weston or myself would have furnished whatever light we had upon the subject, with reference to a correct diagnosis and treatment if called upon, but Drs. Seavey and Brown preferred Finnegan's statements and opinions. Their heads travelled *pari passu* with their hearts.

Twenty days had elapsed since the incision was made. Retraction, absorption, and disintegration, of the unhealthy skin, poultices, and leaving the parts to gape, without the support of straps, had spread the incised abscess just as much as it would or could be done, and had destroyed all evidence of my simple incision. Soon nature would begin to fill in and contract the gaping wound to its normal dimensions. A photograph taken now would show it in its worse aspect to damage me. Manipulated by my enemies in my absence, it could not and did not show my cutting, and the distortions made by their treatment. Drs. Simmons and Jones swore, the uncolored photograph did not show whether the original was an incised, contused, or lacerated wound. It was not proper and correct evidence of an operation performed twenty days before.

Dr. Seavey had Marston called in to take a photograph of the leg in a position calculated to exaggerate the cut. He purchased three pictures, one for Dr. Brown at his request, one for Mace to pursue me with and one for himself as he said to show his friends in self-defence. Dr. Jones testified that this gaping photograph looked as if it had been forcibly enlarged before it was taken.

Marston testified that Seavey told him, "Sanger had cut out a piece of

flesh, let out the joint-water and made the leg stiff. Sanger could be made to pay for it; it was a clear case of malpractice." Dr. Fisher testified that Seavey said before Bowley that, "Dr. Sanger opened the knee-joint, let out the joint-water, etc.; that F. D. Bowley did not have spunk enough to prosecute Sanger for damages. He requested Briggs to get a photographer to take a photograph of the diseased knee, in order to show a jury the condition in which Sanger left the knee. Seavey also said, if Bowley did not prosecute Sanger for butchering his knee, he would."

Dr. Seavey was an avowed enemy of mine. Finnegan and Seavey were on intimate business and social terms. Bowley boarded with Finnegan and was poor, and Mace was out of pocket in malpractice suits. A combination like this would ensure success. A suit would avenge Seavey, pay Finnegan's board bills, let Mace's fingers into my exchequer, and delude poor Bowley with the sweet dream of a gold mine, which others proposed to work.

This photograph was introduced into court to prove that I had cut out flesh 2x3 inches. The wound appeared triangular, below the joint, with apex pointed upward and the base downward over the shin. Finnegan described an oval incision. The photograph showed a triangular one. Finnegan testified that this oval piece of flesh was cut out round the opening lanced by Seavey, above the joint, which would have brought two-thirds of the cut above the articulation. The photograph on the contrary shows the entire wound below the joint.

Dr. Seavey said the wound was two and a-half by one and a-half inches. Drs. Bates, Tewksbury, Jones, Simmons, Bright, Bradbury, Morison, etc., said the gaping and use of tents would cause a simple incision to spread open as much as the photograph showed, and that two inch gaping was not large for a three to three and a-half inch incision. Dr. Fisher described the width as only one and one-fourth inches. Dr. Seavey reluctantly admitted the above amount of gaping possible.

The merest tyro in the art of surgery knows that all cuts or incised wounds will retract or gape, unless the edges are kept together with sticking-plaster and stitches—one or both. Billroth, in his "Surgical Pathology," says, "in a cut allowed to gape, the circumstances are the same as if a piece of flesh had been cut out." Every mother knows the difficulty of keeping the edges of jack-knife cuts together so as to prevent a scar. Every soldier knows what monstrous holes bullets make, and the difference in size between the wounds of entrance and exit, where not a particle of flesh is lost or cut out. They also know the tendency to retraction, absorption and disintegration of the skin, and destruction by gangrene, where it has been contused, congested and inflamed. The difference in size between bullet wounds of entrance and exit, is wholly in the gaping and not in the loss of substance.

Every expert brought to the stand agreed that the natural absorption, disintegration, and retraction of the infiltrated and inflamed skin of

an abscess, cut and treated in the way described by me, would make a hole or wound as large as shown in the photograph, Dr. Brown excepted.

He testified the photograph spoke for itself. When asked which tissue retracted the most, the skin, artery or muscle, he did not know; but attempted to compare the skin of an abscess to the peel of a suoked orange, which was *too thin*!

Dr. Fisher, who saw and dressed the cut next after me, deposed, "there was not any evidence that a piece of flesh had been cut out, excepting the gaping of the wound, which is natural in all long incisions of the skin, and excepting also Dr. Seavey and Finnegan's statement, that a piece of sound flesh had been removed." The uniform testimony was, that the loss of a piece of flesh as large as described would have made a wound at least one-third larger than the photograph showed.

As to injury to the capsular ligament, loss of joint-water, etc., charged in the writ, all agreed such an operation would have confined Bowley to his bed weeks and months, or caused loss of limb or death within a few weeks, instead of rapid improvement, as proved from my incision.

But Dr. Fisher testified "there was no evidence of any surgical injury of synovial membrane, capsular ligament, etc. I know no disease growing out of the operation below the knee. Stiffness of the knee was not due to any surgical operation." Dr. Weston testified, "I was sure nothing was wounded except the skin and fascia."

Injury to the delicate structures of the knee-joint was a subsequent charge. Mace labored upon these fancied injuries, with a confusion of medical jargon, jumbled together like peas in a skillet, conveying to the medical mind a faint conception of Daniel Pratt's (the great American traveller), clear, terse, and argumentative oratory!

Remembering that Dr. Seavey changed his mind, as to which of the delicate structures was involved, we have reason to presume, all were more or less diseased. Now, Drs. Bates and Tewksbury testified that the structures of the knee-joint acquired a tolerance by disease, which enabled the surgeon to operate upon the knee-joint with as much safety as any other part of the human body.

A photograph was taken in August, '76, in the most distorted and unfavorable condition for me, but none in November and December when the cut was nearly or quite healed, and when the cicatrix or scar would have shown the harmless nature of my incision. They even refused to let Dr. Weston or self see or examine the leg at that time, because as it appears from Bowley's letters and Mrs. Bowley's testimony, my treatment had worked favorably.

Mace wrote to Dr. Fisher about this time, "He had me in the palm of his hand, and I knew nothing about his case." An honorable lawyer would not pursue a clandestine course in a bona fide case. I did not know anything about his case! I did not realize the value of distorted photographs and perjured testimony. I did not understand the intrigues and dangers surrounding a juryman and the mysterious operations at

the Franklin House, which might cause a fluttering among the wives at home. I did not know of the combinations more dangerous than highway robbery.

An examination of the leg by disinterested medical experts in November, December, and January, would have buried the case beyond resurrection, and dissipated Mace's dreams like dew before the sun. Such testimony would have ruled the photograph out of the case and exposed the wicked designs of my persecutors by showing, that not any flesh had been removed or lost.

I was not invited by Dr. Seavey to see the leg with him August 31st or September 1st, '76, when I could have corrected all false impressions and suggested ways of saving the leg, but Dr. Seavey did invite me by letter fourteen months afterwards, and ten months after Bowley had reported the old abscess all healed up, to examine the leg the day before it was amputated, and to be present at the dissection. Drs. Jones, Bright, and myself accepted this magnanimous offer. We found, both on examination and dissection a perfect case of caseous degeneration of the knee bones, or white swelling, with abscesses or fistulous sores connecting with the joint, both above and below the articulation.

Dr. Bright, who made the dissection, and Drs. Bright and Jones, who examined the leg and scar the day before and after the amputation, testified that the scar or cicatrix made by my cut was sound and healthy, and did not have any connection with the disease of the bones, for which the leg was amputated.

These letters of Dr. Seavey were paraded before the jury with sophomoric vanity as an insinuating solution of the problem—"Who stole the leg?" Query, who did? There was not over two and one-half inches of either bone involved. Dr. Seavey in the amputation sawed off eleven inches of the thigh bone. If I had amputated a thigh as high up under the circumstances, I should fear that my previous treatment might be called in question, and should thank some one for stealing the leg or spiriting it away, as a bar against a malpractice suit.

I would testify in court as Dr. Seavey did, that my assistant, Dr. Brown, advised me to bar the windows and guard well the doors, with the understanding that Dr. Brown, like poor dog Tray, whom grief could not drive away, should state, "he did not see the operation—he was giving ether."

Fortunately we have Bowley's letters written to Dr. Fisher, and Mrs. Bowley's deposition taken in April, '77, to substantiate my statements, and show what Bowley, Mace, and Seavey were doing. Mrs. Bowley deposed: "After poulticing the cut about two months it had about all healed up and remained so." This was somewhere near the first of November, '76. She says: "I never heard Bowley speak of any running or suppuration after. Have never seen anything come out of it but water. Saw yesterday about a drop of pure water come out of the place."

Bowley writes to Dr. Fisher, October 1st, '76: "That it is healing

very fast. "Went to Bangor on a team." December 13th, "Wound all healed, except a hole about a big as a pea." January 14th, '77. "My knee is all healed up; I have so much to see to I can't get away."

Let's review the past eight months. Bowley was injured April, '76. He continued on crutches and to grow worse for four months, under the treatment of Drs. Folsom, Perley, and Seavey. An abscess had formed, was aspirated and lanced by Dr. Seavey, and still the abscess continued to enlarge, inflame, and grow worse, as confessed by Dr. Seavey, until August 11th, '76, when he came into my hands for twelve days, with, as Dr. Weston deposes, "the appearance of a man who had suffered for months." I enlarged the opening made by Dr. Seavey by a simple incision through the skin and fascia over a grooved director, and he continued to improve for the next four months, until January 14th, '77, when Bowley reports the abscess all healed and too busy to come down. I will leave the inference to my readers.

About the middle of October, Bowley and Mace made their famous crusade through the county, Bowley taking the left flank and Mace the right, armed with their photographs, their manuals, their pamphlets and manuscripts, on a visit to the doctors of Kenduskeag, East Corinth, Bradford, Orono, Oldtown and other towns in the county. Letters reached places not visited by them, and some of a questionable character, which I am not at liberty to publish at present. The outrages of surgeons were heralded the county over.

It was on one of these famous pilgrimages, that Bowley met Dr. Gardner, of Kenduskeag, who testified that Bowley said that Seavey put the idea into his head of prosecuting Dr. Sanger. Seavey and Mace advised him to interest country doctors, as jurors would have more confidence in them than quarrelling city doctors. He had a pocketful of photographs.

It was on one of these memorable tours that Mace attempted to bulldoze Dr. Folsom, of Oldtown, and obtained from Dr. Fisher, of Orono, the famous statement, without address, without date, and without signature, which was admitted in court to discredit Dr. Fisher's testimony.

Mace showed Dr. Folsom the photograph and wanted Dr. Folsom to befriend and help Bowley. Dr. Folsom replied that he was serving Bowley by advising Mace not to bring the suit, as he was Bowley's family physician, had known of and treated Bowley's lameness before he received his last injury, and no physician was responsible for the results of chronic disease like Bowley's. Mace replied that he should follow these physicians who did not do their work well, and Folsom might be the next victim.

The efforts and means resorted to will be better understood by a few extracts from Mace's letters to the doctors of the county. To Dr. Jones, of Springfield, October: "I do not intend to subject you to inconvenience, but would like your opinion. I shall have no fears that any surgeon will perjure and stultify himself." To Dr. Ballard, Lip-

coin, October 27th: "Shall put surgeons upon the witness-stand whether they are willing or not. They must either convict Dr. Sanger or stultify themselves. It was out of consideration to you that I gave you an opportunity to post yourself up. I prefer unwilling witnesses." To Dr. Fisher, November 14th: "I now have Sanger's whole case in the palm of my hand; he knows nothing about my case." November 27th: "I have just returned from Dr. Seavey's office. Dr. Seavey said he would believe you under oath. Do you think Seavey would be likely under the circumstances to take Sanger's part and propose by his own testimony to impeach Bowley's witnesses? * * * To suppress the truth Sanger proposes to make war between you and Dr. Seavey. I think you will take care that he does not do it."

Bowley writes to Dr. Fisher, November 22d: "I rely upon you as my physician and witness. As for Seavey, he is a friend of yours; said you would tell the truth on the stand." December 22d: "Seavey is all right, and will uphold you in everything." April, '77: I have received letters from Seavey and Mace; trial will come on any day." As the April term of court approached Mace writes to Dr. Fisher, April, '77: "Bro. Sanborn, I have no doubt, would like to see you. The truth is, you will find Seavey himself better disposed since Sanger jumped on him." April 13th: "I hope you will not be offended because I wrote to you some time ago, suggesting that you come to Bangor to *especially* prepare yourself to testify in the Dr. Sanger cases. I would like for you to confer with Dr. Seavey. So far as medical testimony is concerned, we should understand each other thoroughly. If you do not come to Bangor I shall go and see you—not to instruct you, but to be instructed by you."

We have already shown by Dr. Gardner's testimony the line of policy pursued by Dr. Seavey and Mace, to interest country doctors as *experts*. Their city experts were either bitter, personal enemies, or rivals of Dr. Sanger's, and would expose the animus of the prosecution. Dr. Fisher, a country doctor, took the bait kindly, and showed evidences of being a pliant and useful witness. Mace had obtained his anonymous statement without address as a pledge of fidelity to them, and it was important to hold him as an intermediate link between me and the photographic fraud, as seen by constant flattering, cajoling, assuring, and encouraging letters.

Fisher betrayed signs of distrust in the cause and motives. He must not slip without a struggle. Mace writes to him as follows: "I shall want to summon about fifty substantial men who have known you best from a boy to sustain you," etc. Providence uses inscrutable means to foil the wicked. The toll was fast being drawn about me. Every avenue of escape was fortified. My property and reputation rested like a counterpoised pinnacle, ready to topple and fall with a crash at the first gust of wind. The argus-eyed harpies were peering into my very vitals, and like the fell swoop of the eagle, or the treacherous spring of the

beast of prey, were ready to gobble me up at the first unguarded moment. How the best laid plans of mice and men were foiled is explained in the following letters:

ONOND, June 18th, 1877.

Dr. E. F. Sanger, Dear Sir:

Enclosed please find the letters and postal cards, which I have received from time to time from F. D. Bowley. I send these hoping a great wrong may be righted. I know to the mind of many it would seem mean and dishonorable for me to disclose them. I do not look upon it in that light, for the specific reason that I have seen through a thick mist from the very first time Bowley came to see me—a strong network of conspiracy to injure you—and I am the tool, as they think, to work out their nefarious plot. I am fully satisfied now that Bowley was sent to me for that very specific purpose, and at first I was partly drawn into their net. I recollect the first time I dressed his knee, that I used some very strong language against you, after hearing his report of what you did for him and his description of the operation, which he alleged you performed upon him; but since I have found out the facts in the case, and seeing the way they went to work to defraud you and injure the medical profession generally, I soon began to get my eyes open to the fraud, and have deserted their camp. As soon as I saw through their murderous web, I was thoroughly disgusted with them all, and am truly sorry to think I added one link to their chain of chicanery by word or acts. I stand upon the broad ground of truth and justice, and will do all in my power to remove the stain from your surgical skill, which they are trying to fasten upon you through fraud and misrepresentation to me. I can see now why they were so anxious to have me meet Dr. C. Seavey at Finnegans, in Bangor, a few days after I began to treat his leg. I then remarked to Dr. Seavey that if it was a fact that you (Sanger) did actually cut out a large piece of sound flesh from his knee, that all such operations should be frowned down, and you should be made to pay damages. There was no need of my making this remark, but under the circumstances in which I was placed, and the language which was used by those present, about you, drew them from me. Now, Dr. Sanger, if there is anything I can do to help you in this case, that I honorably can, I stand ready at any time to do so. The more I look at the matter in its true light, the more I am convinced that you are being injured without just cause, and wholly for money on one part and revenge on the other.

Yours fraternally;

PRESTON FISHER, M. D.

BANGOR, August 15th, 1877.

Dr. E. F. Sanger:

I would like to have you call on me at Mr. Finnegans. * * * I wish to see you privately before I go.

Yours, F. D. BOWLEY.

Mace was seen to leave Finnegan's house before Finnegan brought me this letter. Finnegan pled ignorance of its object, and advised me to see Bowley. I visited Bowley. He would not show his leg, but wanted money. A just cause needed neither concealment nor assistance.

The abscess which was produced by the blow, and the diseased bones of the joint which existed before the blow, were purposely confounded by the prosecution. The only possible connection at this early stage, was the fear that neglect to opening the abscess at first, had caused the matter to dissect into the joint, had inflamed or ulcerated the periosteum or ligaments, so as to make some operation upon the head of the tibia necessary to save the joint.

The abscess as a coincidence would not have occurred without the blow, but the low inflammation of the heads of the bones which existed before the blow, was liable to be aggravated into destruction of the joint by any stub of the toe or wrench, not actively treated. They had in common a predisposing diathesis or cause called scrofula, or struma, which would have produced either, separately, and yet either could have been operated on without producing the other.

Neglect to freely open the abscess had intensified the mischief in the knee-joint, which I think at this late date could have been remedied largely, if Bowley had followed my advice, but he was persuaded to imperil his limb in a law suit. He took the risk and sacrificed every chance of recovery. He lost his limb, and the responsibility rests with his advisers.

The prosecution claims that the predisposing disease was not scrofula, on account of the rapid recovery. Rapid recovery is not unusual in such cases. Every medical expert called to the stand, including Drs. Jones, Simmons, Morison, and Bright, who witnessed the dissection of the joint, testified the disease was not at all dependent on my incision, but on a low, chronic, inflammatory trouble called white swelling. Dr. Folsom, who had the misfortune to lose his leg from the same cause, called it scrofulous, and predicted the result in Bowley's case months before. Dr. Fisher operated on Bowley's father for the same bone disease.

Drs. Seavey and Brown invariably dissented from the views of all medical experts and distinguished surgical authors. Dr. Seavey's connection with the case may excuse the distorted refracting power of his vision; but Dr. Brown, who, like Caesar's wife, was presumed to be above suspicion, either showed culpable and willful ignorance or a malicious perversion of patent facts.

Bryant's Surgery says, there is no difference between the so-called strumous disease and chronic inflammatory affections of these bones. Billroth says, scrofula is the most frequent cause of inflammation of the bones, especially where there is caseous degeneration. Gross says, white swelling don't differ from ordinary inflammation. There was in this case caseous degeneration known the world over by the popular name of white swelling.

Dr. Folsom was afflicted with this disease more than twelve years before amputation. Bowley confessed to lameness, stiffness of cords, or sensation of hurt upon a sudden turn of the leg for years. Billroth says, "a dull, moderate pain and consequent slight impairment of function, often form the only symptoms. The disease may exist for months before we can form a certain diagnosis. It may extend even for years with interruptions of improvement, and then again exacerbations."

The most wicked testimony was in substance from Dr. Seavey, as follows: Cutting that flesh and opening the capsular ligament might be the cause of the loss of Bowley's limb; enhanced the difficulty which previously existed there, etc., etc. This is monstrous in face of the facts; that the incision on a grooved director did not touch the capsular ligament, did not confine Bowley to his bed for a day, there was no exfoliation or necrosis of the bone, the abscess continued to improve daily, nearly healed in November, all healed in January, and further, there was no evidence of enlargement of the knee-joint, detachment or destruction of the cartilages and synovial membrane, until the next spring or summer, when abscesses came both above and below the joint, all of which Dr. Seavey lanced, including the first one. Whom the gods wish to destroy, they first make mad.

There is but one universal opinion about free lancing of abscesses wherever found. Gross, Lister, Erichsen, Billroth, Bryant, Sayre, and all the medical experts advised free incisions—large openings. Dr. Brown dissented, but his cross-examination did not reflect any credit on his claims as an expert.

Drs. Brown and Seavey's great objection was the neighborhood of the delicate structures of the knee-joint. Bryant says, "there is but one form of treatment upon which reliance can be placed in suppuration about the knee-joint. Make a free incision as soon as any pus is detected, or it may open into the joint; have known this to happen in the knee with fatal results" when free incision was not made. Sayre says, "treat an abscess of the joint exactly as an abscess elsewhere." Gross says, "make free incision where matter burrows about joints. Surgeons are too timid." Bryant says, "the sooner an external outlet is made the better." The very object of making a large opening into an abscess about the knee-joint is to prevent it from breaking into the joint.

Dr. Seavey said a large opening would expose the joint to the air. A small opening will let in just as much air as a large one. On the contrary, a large opening will do less mischief, because it will drain off the acrid secretions which burrow and destroy sub-adjacent tissues. Nature abhors a vacuum, and air can't be kept out of any opening unless hermetically sealed. Bacteria destroy animal tissues just as rapidly, let in through a small, as a large hole. Sayre says, "I am not afraid of letting in air. It is the imprisoned air that does the mischief."

Seavey advised to aspirate, or lance the dependent part of this open abscess, and then introduce an oakum seton to keep out the air. You

can't drain an open cavity by atmospheric pressure. It is scientifically absurd. An oakum seton will keep out air, about as well as oakum stuffed into the open seams and worm-eaten holes of an old hulk with a tooth-pick, would keep out water. I relieved the severity of the symptoms by freely opening the abscess, and after improvement commenced, Bowley went over to Seavey again, for the next fourteen months before amputation. What was Seavey's treatment for the bone disease? The united testimony of Seavey, Bowley, and wife, was poultices, washes, salves; washes, salves, poultices, and so on through the nine arithmetical changes, with occasional excursions to the country doctors and repeated visits to Mace, Seavey, and Finnegan. The part played by Finnegan in the treatment don't transpire.

Sayre says, "long-continued use of hot poultices to a joint, and application of hot fomentations in all cases of caries of the bones, are injurious." Bryant says, "walking and standing are positively interdicted, pressure upon and between affected bones forbidden." Billroth, Erichsen, Gross, Fergusson, etc., "the essential element is rest." Rest, splints, plaster supports, starch bandages, extension apparatus, blisters, cauteries, etc., etc., are recommended by all, not one of which was tried by Dr. Seavey for fourteen long months.

Mace and Seavey's treatment was the very antipodes of rest. There was a constant turmoil of body and mind. Does it not look like a put up job? It required constant oscillation on Bowley's part, between Bangor, Orono, and the country towns, in collecting evidence, reconciling differences, suppressing jealousies, and comparing notes; the doubtful to be persuaded, the weak to be encouraged, and the defiant to be threatened. The central power ruled at Bangor, matched and dove-tailed the machinery, which banded Bowley about like a foot-ball at the cost of his purse and leg.

When rest, splints, extension, etc., failed, there were still other means of saving the leg, if not the joint. Not a thing was done except to prepare for court. Sayres, Billroth, Bryant, Fergusson, etc., recommend drilling, trephining, and excision of the diseased, softened and necrosed bone. Fergusson says "there is no more danger from excision of the knee joint than amputation of the thigh, and a well-shaped leg and foot are worth saving at the expense of 5 inches of shortening." Bryant says, "a large number of cases of disease of the joints may be cured by a simple incision into the affected joint, and the removal of necrosed bone with a minimum of danger."

Did Dr. Seavey try drilling of the bone? He did not. Did he try trephining? He did not. Did he try excision? He did not. Did he do anything to save the knee joint? Echo answers! He did, however, sacrifice from 7 to 8 1-2 inches of the thigh bone, which, in my opinion, could have been saved.

Bowley was under my care twelve days, from Aug. 11th to 23d, 1876.

He gained rapidly, and the abscess was healing fast. He was to return again for further investigation and treatment of the diseased bones of the joint. Drilling or trephining was held in reserve, and if successful, would have restored him in a short time, either with a good joint or a stiff knee. A failure would have left the alternative of excision or amputation.

I should have determined it during the fall of '76, and, if worse come to worse, could have guaranteed a stump eight inches longer than he has now, decreased the risk 30 per cent, and saved him a whole year's suffering and anxiety, in nursing his leg and his law suit. I went through this experience at Dexter, where I was sent for to amputate a thigh, for similar disease. I trephined the head of the bone, and in less than three weeks he was about his business again, and to day it would be difficult to determine which was the diseased knee without an examination.

Apropos I was sent for last night to visit in consultation with Dr. Mayo, of Orono, the case of a poor boy, as usual, who had fearfully lacerated and broken the left elbow joint. Query? Abandon the case to inexperienced doctors whose zeal for practice would excuse the venture? Amputate the arm at once, with the chances of either resurrection or theft, as in the Bowley case? or resect the joint and try to save a useful hand and forearm, and get perhaps a little gratitude from him, unless tempted into a law suit against me. We took the risk of resection.

I think the evidence adduced in this trial proves a put up job, the offspring of malice and speculation, in which Bowley's afflictions and his indebtedness increased by business depressions and lingering sickness, were calculated to make a strong appeal upon the sympathies of a jury. One creditor had already spotted me for the trustee process, counting his chickens before they were hatched.

Seavey's triumph over his rival must be vindicated, and Bowley's counsel, flat in law, encumbered in property, out of favor with the Pension Bureau, foiled by me officially, and smarting under the Hale & Emery disgorgement, had put a year's hard study into this case, with the expectation of rolling this little bonanza, like a sweet morsel, under his tongue. Months had been spent in committing high-sounding medical phrases and words, which were promiscuously used in a harangue of more than three hours, interlarded with the lowest vituperations and the vilest blackguardism, to delude a jury ignorant of the science of medicine, into the belief that such flimsy nonsense, worthy of the derision, disgust, and contempt of honorable, intelligent, and cultivated citizens, could possibly pass for eloquence and argument. The jurymen were sorely beset with trials and temptations, in and out of the court-house, and those who went home to their families with a clear conscience, have reason to be proud of their powers of resistance.

The foregoing illustrates the dangers surrounding our profession, like

a powder mine likely to be sprung upon us at any moment, when for the most frivolous causes, any one is tempted to drop the spark. Malpractice suits are like a two-edged sword, they ruin the surgeon if defeated, and bury him in costs if victorious, and yet he must come to the defence or allow his reputation to be blasted, which is worse than death, as it robs him of his means of support.

There is no way for the surgeon to guard against such suits, as they come from sources least expected, and from the most unwarrantable causes. Suddenly summoned, without time to guard his actions, in his eagerness to relieve suffering and save life, or limb, he throws himself into the breach, from which there is no retreat, provided his patrons are bent upon mischief, or are persuaded into a malicious prosecution by some wicked lawyer, who convinces them that the physician or surgeon is compelled to restore the diseased, distorted, mangled, or injured human frame to its pristine beauty and perfection.

The science of medicine and surgery is not a fixed science. There are as many theories and ways as there are diseases and injuries, all of which have their advocates and are open in the frailty of human thought and invention to objections, criticisms, and attacks. The physician and surgeon is open to attack from all quarters, from his pills as well as his scalpels, and his proudest monuments of skill may be turned into citadels of attack, and the perverted means of his destruction.

Open as the surgeon is to the risks and dangers of prosecutions, he should enjoy special privileges of defense. He should at least be put on equal footing with the prosecuting party. As it is now, the pauper patient can attack and only the rich surgeon can defend. The poor surgeon must break up and flee from the attack, while the rich surgeon, whose very reputation and wealth is a guarantee against malpractice, must waste his substance in defense. The poor patient is tempted by the chances offered by the lottery of law to prosecute a claim, which costs him nothing if he fails, while it eats the surgeon up with costs, if he succeeds, as no lawyer will undertake a *defense* without pay. What the physician and surgeon needs, and what should be granted, is, that persons bringing suits of malpractice against physicians and surgeons should obligate themselves to pay the taxable costs, which they have created by their own acts, provided they lose their suits, and not, as it is now, inflict upon the surgeon, victorious in defense, the costs of a suit forced upon him, and which self-preservation will not allow him to dodge. Such is practically the case now, as a judgment against a poor plaintiff is worthless.

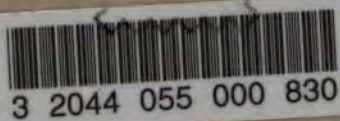
This law is in operation in some of the States, and works well as a protection, both to the patient and physician. It protects and builds up the science and art of surgery. It gives the patient better surgery, and the surgeon greater inducements to perfect himself. It leaves him un-

trammeled in his best efforts to relieve human suffering, rather than compels him to exclude the poor from the benefit of his experience, for fear of attempts to rob him of his hard-earned competency, and tarnish his fair name acquired by years of toil, study, and self-denial, and hundreds of dollars, in qualifying for practice.

EUGENE F. SANGER, M. D.







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